



DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Parts 550 and 553

[Docket ID: BOEM-2023-0001]

RIN 1010-AE17

2023 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements the 2023 inflation adjustments to the maximum daily civil monetary penalties contained in the Bureau of Ocean Energy Management (BOEM) regulations for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Oil Pollution Act of 1990 (OPA), pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Improvements Act) and relevant Office of Management and Budget (OMB) guidance. The 2023 adjustment multiplier of 1.07745 accounts for 1 year of inflation from October 2021 through October 2022.

DATES: This rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Questions regarding the inflation adjustment methodology or amount should be directed to Martin Heinze, Economics Division, BOEM, at martin.heinze@boem.gov or at (703) 787-1010. Questions regarding the timing of this adjustment or the applicability of the regulations should be directed to Satrina Lord, Office of Regulations, BOEM at satrina.lord@boem.gov or at (703) 787-1250.

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I. Legal Authority

OCSLA authorizes the Secretary of the Interior (the Secretary) to impose a daily civil monetary penalty for a violation of OCSLA or its implementing regulations, leases, permits, or orders. It also directs the Secretary to adjust the maximum penalty at least every 3 years to reflect any inflation increase in the Consumer Price Index. 43 U.S.C.

1350(b)(1). Similarly, OPA authorizes civil monetary penalties for failure to comply with OPA’s financial responsibility provisions or their implementing regulations. 33 U.S.C. 2716a(a). OPA does not include a maximum daily civil penalty inflation adjustment provision. *Id.*

The Improvements Act¹ requires that Federal agencies publish inflation adjustments to their civil monetary penalties in the *Federal Register* not later than January 15 annually.² Pub. L. No. 114-74, sec. 701(b)(1). The purposes of these inflation adjustments are to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, sec. 2 (codified at 28 U.S.C. 2461 note).

II. Background and Purpose

BOEM implemented the 2022 inflation adjustment for its civil monetary penalties through a final rule entitled “2022 Civil Penalties Inflation Adjustments for Oil, Gas, and Sulfur Operations in the Outer Continental Shelf,” which was published in the *Federal Register*. 87 FR 15333 (March 18, 2022). That rule accounted for inflation for the 12-month period between October 2020 and October 2021.

The OMB memorandum M-23-05³ reiterates agency responsibilities under the Improvements Act. Such responsibilities include identifying applicable penalties and performing the annual adjustment; publishing revisions to regulations to implement the adjustment in the *Federal Register*; applying adjusted penalty dollar amounts; and performing agency oversight of inflation adjustments.

¹ The Improvements Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990. *See* Pub. L. No. 101-410 (codified at 28 U.S.C. 2461 note).

² Under the Improvements Act, Federal agencies were required to adjust their civil monetary penalties for inflation with an initial “catch-up” adjustment through an interim final rulemaking in 2016 and must make subsequent inflation adjustments not later than January 15 annually, beginning in 2017. Pub. L. No. 114-74, sec. 701(b)(1).

³ OMB Memorandum M-23-05 “Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015” is available at <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>

Pursuant to the Improvements Act, this final rule implements BOEM’s 2023 inflation adjustments to OCSLA and OPA maximum daily civil monetary penalties. A proposed rule is unnecessary as the Improvements Act expressly exempts annual civil penalty inflation adjustments from the Administrative Procedure Act’s (APA) notice of proposed rulemaking, public comment, and standard effective date provisions.

Improvements Act, Pub. L. No. 114-74, sec. 701(b)(1)(D); APA, 5 U.S.C. 553.⁴

On July 22, 2021, BOEM issued a final rule entitled “Maximum Daily Civil Penalty Amounts for Violations of the Federal Oil and Gas Royalty Management Act” (RIN 1010-AE08, 86 FR 38557), which amended those BOEM regulations that set maximum daily civil penalty (MDCP) amounts for violations of the Federal Oil and Gas Royalty Management Act (FOGRMA). BOEM amended its regulations to cross-reference the Office of Natural Resources Revenue (ONRR) regulations that also set MDCP amounts for FOGRMA violations. This cross-reference ensured consistency between BOEM’s FOGRMA MDCP amounts and ONRR’s FOGRMA MDCP amounts. It also ensured consistent compliance with the Improvements Act and related OMB guidance while reducing unnecessary duplication of effort and costs to BOEM. Because that rule established a permanent cross-reference between BOEM’s FOGRMA civil penalties amounts and those of ONRR, the BOEM FOGRMA civil penalties are not being adjusted with this rulemaking (which is now confined to civil penalties unrelated to FOGRMA).

⁴ Specifically, Congress directed that agencies adjust civil monetary penalties “notwithstanding section 553 of title 5, United States Code [Administrative Procedure Act (APA)],” which generally requires prior notice of proposed rulemaking, opportunity for public comment on proposed rulemaking, and publication of a final rule at least 30 days before its effective date. Improvements Act, sec. 701(b)(1)(D); APA, 5 U.S.C. 553. OMB confirmed this interpretation of the Improvements Act. OMB M-23-05 at 3-4 (“This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.”).

III. Calculation of the 2023 Adjustments

In accordance with the Improvements Act, BOEM determined that OCSLA and OPA maximum daily civil monetary penalties require annual inflation adjustments and issues this final rule adjusting those penalty amounts for inflation through October 2022. The annual inflation adjustment is based on the percent change between the Consumer Price Index for All Urban Consumers (CPI-U) for the October preceding the date of the adjustment and the prior year's October CPI-U. Consistent with OMB M-23-05, the 2023 inflation adjustment multiplier can be calculated by dividing the October 2022 CPI-U by the October 2021 CPI-U. In this case, October 2022 CPI-U (298.012) / October 2021 CPI-U (276.589) = 1.07745.

For 2023, BOEM multiplied the current OCSLA maximum daily civil monetary penalty of \$48,862 by the multiplier 1.07745 to equal \$52,646.36. The Improvements Act requires that the resulting amount then be rounded to the nearest dollar. Accordingly, the 2023 adjusted OCSLA maximum daily civil monetary penalty is \$52,646.

For 2023, BOEM multiplied the current OPA maximum daily civil penalty amount of \$51,796 by the multiplier 1.07745 to equal \$55,807.60. The Improvements Act requires that the resulting amount then be rounded to the nearest dollar. Accordingly, the 2023 adjusted OPA maximum daily civil monetary penalty is \$55,808.

The adjusted penalty amounts take effect immediately upon publication of this rule. Under the Improvements Act, the adjusted amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates the increase.

This table summarizes BOEM's 2023 maximum daily civil monetary penalties for each OCSLA and OPA violation:

CFR Citation	Description of the Penalty	Current Maximum Penalty	Multiplier	Adjusted Maximum Penalty
30 CFR 550.1403 (OCSLA)	Failure to comply per day per violation.	\$48,862	1.07745	\$52,646
30 CFR 553.51(a) (OPA)	Failure to comply per day per violation.	\$51,796	1.07745	\$55,808

IV. Statutory and Executive Order Reviews

A. Statutes

1. National Environmental Policy Act

This rule does not constitute a major Federal action under the National Environmental Policy Act of 1969 (NEPA) because the civil penalty adjustments are required by law (*see* 40 CFR 1508.1(q)(1)(ii)). The Improvements Act requires BOEM to annually adjust the amounts of its civil penalties to account for inflation as measured by the Department of Labor's Consumer Price Index. Accordingly, BOEM has no discretion in the execution of the civil penalty adjustments reflected in this final rule. Because this rule is not a major Federal action, it is therefore not subject to the requirements of NEPA. Even if this were a discretionary action subject to NEPA, which it is not, a detailed statement under NEPA would not be required because, as a regulation of an administrative nature, this rule would be covered by a categorical exclusion (*see* 43 CFR 46.210(i)). Moreover, BOEM determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would prevent reliance on the categorical exclusion. Therefore, a detailed statement under NEPA is not required.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Improvements Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. Improvements Act, Pub. L. No. 114-74, sec. 701(b)(1)(D); OMB M-23-05 at 3-4. Thus, the RFA does not apply to this rulemaking.

3. Paperwork Reduction Act

This rule does not contain information collection requirements, and, therefore, a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

4. Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, of more than \$100 million per year (adjusted for inflation). The rule does not have a significant or unique effect on State, local, or Tribal governments, or on the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

- (a) will not have an annual effect on the economy of \$100 million or more;
- (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and
- (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*) and OMB guidance,⁵ this rule is not a major rule, as defined by that act. 5 U.S.C. 804(2).

B. Executive Orders (E.O.)

1. Governmental Actions and Interference with Constitutionally Protected Property Rights (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

2. Regulatory Planning and Review (E.O. 12866); Improving Regulation and Regulatory Review (E.O. 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA determined that annual civil penalty inflation adjustment rules are not significant if they exclusively implement the annual inflation adjustment consistent with OMB guidance and have an annual impact of less than \$100 million. *See* OMB Memorandum M-23-05 at 3. This rule meets those conditions and, thus, is not a significant rule.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation's regulatory system to reduce uncertainty and to promote predictability and for the use of the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science

⁵ *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB M-19-14, Guidance on Compliance with the Congressional Review Act (2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf>; OMB Memorandum M-23-05 at 3.

and that the rulemaking process must allow for public participation and an open exchange of ideas. However, BOEM is using neither science nor public participation in this rulemaking. Congress directed agencies to adjust the maximum daily civil penalty amounts using a particular equation without public participation. BOEM does not have discretion to use any other factor in the adjustment. BOEM has developed this rule in a manner consistent with the requirements in E.O. 13563 to the extent relevant and feasible given the limited discretion provided agencies under the Improvements Act.

3. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

4. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule merely adjusts the dollar amount of civil monetary penalties that BOEM may impose on its lessees and has no effects on any action of State or local governments. Therefore, a federalism summary impact statement is not required.

5. Consultation and Coordination with Indian Tribal Governments (E.O. 13175)

The Department of the Interior and BOEM strive to strengthen their government-to-government relationships with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of the Tribes' right to self-governance and Tribal sovereignty. BOEM evaluated this rule under the Department of the Interior's consultation policy, Departmental Manual part 512 chapters 4 and 5, and E.O. 13175, and determined that this rule has no substantial direct effects on federally recognized Indian

Tribes or Alaska Native Claims Settlement Act Corporations and that consultation under existing Department and BOEM policies is not required.

6. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (E.O. 13211)

This rule is not a “significant energy action” under the definition of that term found in E.O. 13211. Therefore, a statement of energy effects is not required.

List of Subjects

30 CFR Part 550

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Federal lands, Government contracts, Investigations, Mineral resources, Oil and gas exploration, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Sulfur.

30 CFR Part 553

Administrative practice and procedure, Continental shelf, Financial responsibility, Liability, Limit of liability, Oil and gas exploration, Oil pollution, Outer continental shelf, Penalties, Pipelines, Reporting and recordkeeping requirements, Rights-of-way, Surety bonds, Treasury securities.

Laura Daniel-Davis,
Principal Deputy Assistant Secretary,
Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR parts 550 and 553 as follows:

PART 550—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

2. Revise § 550.1403 to read as follows:

§ 550.1403 What is the maximum civil penalty?

The maximum civil penalty is \$52,646 per day per violation.

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

3. The authority citation for part 553 continues to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

4. Revise § 553.51(a) to read as follows:

§ 553.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to \$55,808 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

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